UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/SR.1
9 August 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 1st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 1991, at 10.30 a.m.

Temporary Chairman: Mr. TURK

Chairman: Mr. JOINET

CONTENTS

Opening of the session

Statement by the Under-Secretary-General for Human Rights

Election of officers

Tribute to the victims of apartheid

Adoption of the agenda

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-12622/3512B

The meeting was called to order at 10.55 a.m.

OPENING OF THE SESSION

1. The TEMPORARY CHAIRMAN welcomed all participants to the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. Pursuant to Commission on Human Rights resolution 1990/64, he had presented the Sub-Commission's report on its forty-second session (E/CN.4/1991/2) to the Commission at its forty-seventh session. His report had covered the terms of reference and role of the Sub-Commission, its methods of work, studies and activities of special rapporteurs; standard-setting activities, consideration of new developments in the field of human rights, efforts for improvement of the Sub-Commission's working methods, and resolutions and decisions. The debate, in which more than 20 representatives of States and a number of NGOs had taken part, had been wide-ranging and had provided an in-depth analysis of the Sub-Commission's work. Frank and constructive critical remarks had been voiced during the Commission's consideration of the report of the Sub-Commission. The criticisms had focused on the proliferation of agenda items and studies, the spending of time on what were called non-priority activities, including the debating of political and other issues discussed elsewhere in the United Nations system, and slow progress in some of the standard-setting activities currently under way in the Sub-Commission. None of those points was entirely new and the Sub-Commission should therefore spare no effort to endeavour to improve its working method and performance.

3. Commission on Human Rights resolution 1991/56 clearly reflected the main concerns of the Commission. Thus, in operative paragraph 3, the Commission requested the Sub-Commission to give priority to those topics on which standards were being prepared, in accordance with decisions taken by the Commission and within the time-frame set by the Commission. Furthermore, in operative paragraphs 7 and 8 the Commission recommended that the Sub-Commission should restrict the number of studies undertaken at any one time in order to give the opportunity to all members to participate in an in-depth discussion among experts, and further recommended that the Sub-Commission should consider elaborating procedures with a view to ensuring the earliest possible completion of studies. He considered that those requests and recommendations should figure very prominently on the Sub-Commission's programme of activities to improve its working methods.

4. The critical remarks by the Commission had been made in due cognizance of, and indeed with appreciation, of the Sub-Commission's current efforts to improve its working methods and enhance cooperation with its parent body. Thus, the sixth and seventh preambular paragraphs of Commission resolution 1991/56 expressed appreciation of the intensified dialogue with the Sub-Commission and called for its further strengthening of that dialogue. In operative paragraph 13, the Commission had invited the Sub-Commission to intensify the debate on reform, on the basis of Sub-Commission decision 1989/104. In his view, those points testified to the improved cooperation and understanding between the Commission and the Sub-Commission. He was convinced that the practice of direct contact between the Chairman of the Commission and

the Sub-Commission, started in 1990, played an important part in the overall strengthening of the dialogue. The ideas presented to the Sub-Commission the previous year by Mrs. Quisumbing, Chairman of the forty-sixth session of the Commission, continued to be a source of inspiration and would play an important part in the discussion at the meetings with the Chairman of the forty-seventh session of the Commission later that month.

5. He recalled that an interesting exchange of views had been held on the improvement of the Sub-Commission's working methods at that session and subsequently. A few informal meetings between some members of the Sub-Commission and a number of interested non-governmental and other organizations had been held in Geneva. He believed that those activities would help the Sub-Commission to make substantial progress in matters relating to its working methods at its present session, corresponding to the expectations voiced by the Commission.

6. At its forty-second session the Sub-Commission had followed with particular attention developments at Oka-Kanasatake and Kahnawake in Canada. At that time the Government of Canada had offered to provide regular timely information on its efforts to ensure a peaceful resolution of the situation. That cooperation had been extended to the Sub-Commission after its forty-second session, until the situation had been peacefully resolved. He hoped that that example had contributed to setting a precedent to be followed by others in assisting United Nations organs to achieve an objective understanding of questions brought to their attention.

7. In his capacity as Chairman of the Sub-Commission he had used every opportunity to speak about its work, activities and potential and had participated in the World Congress on Human Rights held in New Delhi in December 1990. He was convinced that all members of the Sub-Commission were continually engaged in that type of activity.

8. The Sub-Commission was in many ways a unique forum. It had to be sensitive to many complex human rights questions throughout the world and must give due regard to all new developments in that field. It was very often confronted with issues with an important political component. Its members had to rely not only on their own expertise but also on their ability to understand the views and arguments of others, in particular those expressed by non-governmental organizations and observer Governments. In that context, the Sub-Commission's ability to avoid undue politicization and to assess realistically its potential role were particularly significant. Above all, the Sub-Commission must be able to show initiative and be able to respond to human rights problems wherever they occurred. One example in that connection had been the Sub-Commission's efforts at its last few sessions to investigate the principal human rights problems in the situations resulting from the various instances of the use of military force in the Gulf region. Those experiences and others had demonstrated the advantages and shortcomings of the Sub-Commission's action. New challenges continued to emerge: the world had recently witnessed in a European country an example of the use of armed force against democratically elected Governments and against people who exercised their democratic rights. Any use of armed force, regardless of where it occurred, made political solutions very difficult to achieve and produced a series of adverse effects on human rights. Such situations represented a typical challenge for the Sub-Commission.

9. In conclusion he expressed his deep gratitude to the members of the Commission for the honour they had done him in electing him Chairman of the previous session. He was confident that his successor would receive the same cooperation and understanding extended to himself.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

10. Mr. MARTENSON (Under-Secretary-General for Human Rights), having welcomed participants, said that the Sub-Comission was a key organ in the United Nations system for the promotion and protection of human rights. There were many weighty matters on the agenda of the current session, and he pledged his own support and that of the staff of the Centre for Human Rights during the next four weeks of what promised to be most intensive work.

11. The past year had seen serious challenges to the basic principles of international relations and respect for human rights. The Gulf crisis had begun a year ago with Iraq's invasion of Kuwait. In the aftermath of the military action, practical steps had been taken to protect basic human rights, including the right to life of vulnerable groups in that area. Those practical humanitarian initiatives had once again demonstrated that a State did not have an unfettered right to treat its people as it alone saw fit. It was now clear that the international prerogatives of States could no longer be separated from their responsibilities to respect human rights. One thing had emerged from the events of the past year: a reaffirmation of the importance of human rights to the peoples of the world and to international relations.

12. The achievements of the General Assembly, including the adoption of the Convention on the Rights of Migrant Workers and the guidelines on computerized personal files, the resolution on the World Conference on Human Rights, scheduled for 1993, and the decision to strengthen the Centre for Human Rights, bore witness to that reaffirmation. So too did the work of the Commission on Human Rights, which at its last session had established a working group on arbitrary detention, had extended the country-specific mandates to new situations, and had approved the draft body of principles for the protection of persons with mental illness and for the improvement of mental health care. The vast majority of the Commission's decisions had been taken by consensus. The fact that human rights were too deeply anchored in international affairs and world public opinion to be easily swayed by the currents of extraneous events was to be welcomed.

13. Today human rights were central to the activities of the United Nations and to international affairs. As the Secretary-General had said in connection with the three principal objectives of the United Nations, "the resolution of conflicts, observance of human rights and the promotion of development weave the fabric of peace. If one of the strands is removed, the tissue will unravel". Promoting respect for human rights played a crucial role in peace-making and peace-keeping efforts, as demonstrated by the opening of human rights monitoring offices in El Salvador and in the human rights elements in the plans being prepared for Cambodia.

14. Respect for human rights was also an important element in international and national efforts to promote sustained and genuine economic development. Internationally, that concern for respect for human rights in the development

process and the contribution that human rights could make to successful development had been reflected in the resolution of the General Assembly adopted at its special session on international economic development in April 1990, in the Programme of Action adopted by the Second United Nations Conference on Least Developed Countries in Paris in September 1990, and in the recently-approved strategy for the Fourth United Nations Decade. The basis was thus being laid for the integration of human rights concepts into the planning, execution and evaluation of development projects.

15. At the national level, it had been realized that democracy and development were also closely linked. In his statement to the Paris summit of the Conference on Security and Cooperation in Europe, the Secretary-General had said, that while democracy was a necessary condition for the recognition of basic human rights, it was not in itself sufficient to ensure the actual enjoyment of those rights. Indeed, genuine political democracy had little chance of surviving and stability was bound to prove elusive without social justice.

16. Over the years the United Nations had put into place - progressively and perhaps unnoticed by many - a fairly comprehensive system for the international protection of human rights. In coverage of rights and variety of mechanisms, the United Nations system far exceeded past attempts to protect human rights internationally and those now existing regionally. The United Nations had first developed an international code for the protection of human rights based on the Universal Declaration and the two International Covenants and complemented by well over 70 other instruments. Those detailed standards covered a wide range of issues affecting almost every area of human life.

17. Procedures and mechanisms had also been developed internationally to oversee compliance by States with their human rights obligations. Committees of independent experts monitored State performance under treaties through constructive and critical dialogue with Governments; failures were pointed out, remedies suggested and improvements welcomed. Certain committees examined individual complaints, and if violations were found, remedies and redress could be recommended. Over the years the committees charged with the implementation of the various treaties had gained significant expertise and experience in many fields of direct relevance to the work of the Sub-Commission. In that connection, he referred to the many General Comments adopted on a large number of issues.

18. Parallel to that treaty-based system, procedures and mechanisms had been developed by Charter-based bodies - in particular, the General Assembly, the Commission on Human Rights and the Sub-Commission - which were more flexible and rapid and of wider scope, for example, applicable to all States. Country situations which were particularly serious were investigated by independent experts and their reports debated in public, creating international concern which States found increasingly difficult to disregard. Types of serious violations wherever they occured, such as arbitrary executions, disappearances and torture were investigated and reported on, with numerous urgent cases being transmitted by telegram to Governments. In 1990 alone, over 1,000 cases had been transmitted as urgent action by cable.

19. Over the years the Sub-Commission had played an important role in the creation of the present United Nations system for the promotion and protection of human rights. Early on, its studies had shown the need for new standards and pointed the way towards new means of implementation. The Sub-Commission had contributed to the drafting of important international treaties, most recently relating to the abolition of the death penalty, the protection of persons suffering from mental illness, the elimination of disappearances, and computerized personal files. Studies under way today on such issues as minority rights, the implementation of economic, social and cultural rights, the extremely poor, the environment and other emerging subjects with human rights content would surely lay the foundation for future action. The Sub-Commission had made an indispensable contribution to the means of intervening to protect human rights; suggestions by the Sub-Commission had led to the establishment of the various working groups and special rapporteurs on important issues.

20. As the United Nations system had evolved, so too had the contribution of the Sub-Commission, which had been able to retain its relevance in a vastly changed world. The Sub-Commission had shown itself to be both a think-tank for reflection by international experts and a sounding-board for problems, ideas and issues from the non-governmental community. The non-governmental organizations played a unique role in the Sub-Commission, providing information and expertise about problems and progress all over the world.

21. Since its earliest years the Sub-Commission and its methods of work had been the subject of debate. Each year the report of the Sub-Commission was carefully reviewed by the Commission on Human Rights, which set out guidelines for the Sub-Commission in its annual resolutions. In the past, the Sub-Commission had given careful attention to the Commission's views and had taken practical steps to follow its guidelines. The success of the Sub-Commission in so doing was reflected in the reports presented each year by its Chairman to the Commission.

22. He had given some thought as to how the Sub-Commission might make maximum use of the expertise and experience of the various treaty-based bodies and other organs which had developed over the years to strengthen the approach of the United Nations to various problems and avoid the development of parallel patterns of thinking. The previous year, he had suggested to the Committee on the Elimination of Racial Discrimination and to the Sub-Commission that a joint meeting might take place to discuss subjects of common concern. That suggestion had been welcomed, and the joint meeting would be scheduled for a mutual agreeable time later that month after consultation between the officers of the Committee and the Sub-Commission.

23. Since that was a most important first step forward towards more effective action against discrimination, the Centre had given some thought to its preparation. The agenda should be flexible, as befitted meetings intended to produce new ideas. The following might be considered for discussion: ways and means of coordinating action in combating racism and racial discrimination; mutual assistance for further enhancing action in combating racism and racial discrimination; emerging problems and trends involving racism and racial discrimination; and potential conflicts between the right to protection from racial discrimination and certain other fundamental rights and freedoms.

24. He believed that further steps could be envisaged to expand the cooperation between the Sub-Commission and other United Nations human rights bodies. For instance the Sub-Commission, in connection with its research, could systematically request the views of relevant committees which in turn could consult the Sub-Commission on matters of importance. Each body might perhaps appoint from its membership a liaison person or rapporteur to facilitate communications and enhance positive interaction between them.

25. The Sub-Commission might wish to consider a similar approach with regard to standard-setting. Existing international standards protecting human rights were numerous and detailed. As shown by Mr. Alston's report to the General Assembly on the implementation of human rights treaties, States were having increasing difficulty in dealing with the many international instruments. While it was clear that many serious human rights problems remained to be addressed, the Sub-Commission might wish to review those problems in order to determine whether they would be best dealt with through improved implementation of existing international standards or whether new norms were necessary. The Sub-Commission could request the views of the existing treaty bodies, the special rapporteurs and working groups involved in implementing human rights standards to determine if new standards were needed with regard to a particular problem, and if so, which norms would be most helpful. Those bodies were in constant contact with the reality of the enjoyment of human rights and the problems faced in that regard and might have interesting and helpful suggestions to make.

26. As progress was being made in putting into place the present United Nations system for the protection of human rights, it had become clear that in order to bring about lasting changes in the way people lived, efforts had to be made to establish and strengthen national institutions and practices for the promotion of human rights on the one hand, and on the other to increase public awareness of human rights aimed at establishing a universal culture of human rights. He had thus taken the two-fold initiative of expanding and reinforcing the United Nations programme of advisory services and technical assistance in the field of human rights and giving new impetus to the public information activities, in particular through the World Public Information Campaign for Human Rights.

27. The advisory services and technical assistance programme was now active in providing expert assistance to Governments, inter alia, in the drafting of constitutional, legislative and administrative acts; in contributing to the establishment of national and subregional centres for human rights documentation and training; in providing fellowships for the advanced study of human rights questions; and in convening human rights courses and workshops for administrators of justice and other public officials in order to enhance their awareness of standards and of the benefits which the implementation of those standards could bring to society and to prepare officials and educators for the task of training others. Those activities were carried out in an action-oriented and pragmatic fashion in cooperation with Governments and regional and international organizations. An important aim of the Programme was to strengthen national and regional infrastructures for the protection and promotion of human rights. Such technical assistance by the United Nations in the field of human rights could be seen as a complement to, but never as a substitute for, the investigation and monitoring procedures decided upon by the relevant human rights bodies.

28. An important factor which had made it possible to expand the advisory services and technical assistance programme had been the establishment of the United Nations voluntary fund for advisory services and technical assistance in the field of human rights. For example, since mid-1988, when the voluntary fund had begun operations, the Centre for Human Rights had organized some 30 regional or national workshops or training courses in all parts of the world. In the process, over 2,500 administrators of justice, government officials and law enforcement officers had been trained by highly qualified international experts. The Centre had also assisted in establishing law libraries and in translating basic human rights instruments into local languages and printing them and had also provided other ad hoc forms of technical support. Over the past year national or regional training courses or workshops had been held in Kiev, Manila, Ottowa, Montevideo, Asunción, New Delhi, Caracas, Brasilia and Lisbon. In March 1991 a training course on human rights and the administration of justice had been organized at San Remo, Italy, for French-speaking African countries. The Centre hoped to organize a follow-up course for English-speaking countries in Africa later in the year. In July the Centre had organized, in cooperation with the African Commission on Human and Peoples Rights and with the support and cooperation of the Government of Egypt, a high-level regional seminar on international human rights standards and the administration of justice. Representatives from over 40 African countries had taken part, along with members of the African Commission, United Nations agencies and non-governmental organizations.

29. The Centre for Human Rights had had a long-standing programme of cooperation with the African Commission on Human and People's Rights from its inception. The Centre had assisted members of the Commission in becoming familiar with the work of the Human Rights Committee and had jointly organized training courses with it. Recently, an agreement had been reached for providing various forms of assistance to the Commission. The Centre had also published a booklet containing the African Charter on Human and People's Rights and the rules of procedure of the Commission. In addition, the Centre for Human Rights had helped the African Centre for Democracy and Human Rights Studies in Banjul to put its infrastructure into place. The envisaged assistance included the provision of books and documentation on human rights to assist the African Centre in its information and training activities. The Centre for Human Rights was also cooperating closely with the Arab Institute of Human Rights in Tunis, which it had helped to establish in 1990 and one of whose main functions was to promote human rights in the region through training courses and to disseminate human rights information.

30. The Centre for Human Rights had also established closer cooperation in human rights matters with the Council of Europe. In the current year he had visited Strasbourg and had discussed human rights issues with those responsible at a high level. Moreover, human rights had had an important place in the discussions at the first meeting between the Secretariats of the United Nations and the Organization of American States held in May 1991 in New York, where he had suggested ways of improving mutual cooperation. In addition, earlier in the year the issue of improved cooperation, including the establishment of regional or subregional human rights training and documentation centres, had been discussed in Washington D.C. with the Secretariat of the Inter-American Commission on Human Rights.

31. One function of the advisory services and technical assistance programme was to provide support for the democratization process in eastern and central Europe. Expert assistance had been provided to Romania and Albania in connection with the technical and legal aspects of democratic elections. In addition, in December 1990, a seminar had been organized in Geneva for Romanian parliamentarians dealing with the drafting of the new constitution, and in February 1991 a mission of experts had visited Bucharest to discuss the draft with those involved in its preparation. Furthermore, agreements for assistance under the programme had been concluded with Bulgaria and Poland, and discussions were under way with other countries in the region. In June 1991 a mission of experts had gone to Mongolia to assist in the drafting of that country's new constitution. Forthcoming activities under the Programme included a workshop on the implementation of international human rights instruments and reporting obligations, which would take place in Moscow in late 1991. Over 150 government officials, university professors, judges and others from all over the Soviet Union were expected to take part in the workshop, organized by the Centre with the support of the Government of the USSR. In addition, a seminar on international human rights standards would be organized by the Centre in September for the judges of the Romanian Supreme Court. Recently, the Centre for Human Rights and the World Council of Churches had jointly organized a seminar in Geneva for experts from South Africa on international human rights norms and constitutional law. The purpose of the seminar had been to discuss international human rights standards and their expression in constitutional law, and the participants, who had taken part in their personal capacity, had come from a very broad spectrum of South African society. The seminar had been seen by the participants as a positive contribution to the understanding of basic international principles and of how they related to national law and constitutions. Two further meetings within the advisory services field were due to take place in the next two months: in September there would be a meeting of experts to review the experiences of countries in the operation of schemes of internal self-government for indigenous populations, to be held at Nuuk in Greenland, and a meeting of representatives of national institutions for the promotion and protection of human rights was scheduled to be held in Paris in October.

32. Information and education constituted one of the three pillars of the human rights programme, alongside standard-setting and implementation, since the maxim that in order to defend human rights a person must first be aware of them remained undeniable. The Centre had accordingly undertaken to highlight the importance of the Universal Declaration of Human Rights and to spread the human rights message throughout all regions and all communities. It was striving to be in a position to respond effectively and efficiently to the increasing number of requests for information coming from Governments, groups and individuals in all Member States. A public information campaign for that purpose had already been organized.

33. Combating discrimination, and in particular racial discrimination, had historically been of primary importance to the Sub-Commission. Various studies had been carried out, including the 1976 study on racial discrimination and the drafting of the Convention on the Suppression and Punishment of the Crime of Apartheid. The Sub-Commission had also sponsored Mr. Khalifa's study

of the adverse consequences for the enjoyment of human rights of the assistance given to the apartheid regime in South Africa, and the value of that work was now reflected in the changes taking place in that country.

34. The Sub-Commission had also made significant contributions to the Decades of Action against Racism and Racial Discrimination and would be considering Mr. Eide's report on that matter at its current session. Following the suggestion of the Sub-Commission, the Commission on Human Rights had recommended a third decade to the General Assembly, and the Sub-Commission's contribution to the programme for the third decade would be most welcome. As Co-ordinator of United Nations activities under the Second Decade against Racism and Racial Discrimination, he had given the highest priority to activities against discrimination, including apartheid. In December 1990, the Centre had organized, in Geneva, a seminar on the political, historical, economic, social and cultural factors contributing to racism, racial discrimination and apartheid, the report of which was available to members of the Sub-Commission. Earlier in 1991 he had convened a meeting in Geneva of the specialized agencies and United Nations Secretariat units to discuss activities against discrimination and to encourage their strengthening and new initiatives. He had also been in touch with the heads of all agencies and Secretariat units concerning further activities under the Decade. An important element for the Second Decade was the promotion of legislation against racial discrimination and in favour of tolerance. The Global Compilation of National Legislation against Racial Discrimination had now been published, and model legislation against racial discrimination based on it was now being prepared.

35. Many items on the Sub-Commission's agenda touched upon the relationship between the individual and the State when the individual was faced with State power exercised through the judicial system. The item on the administration of justice and the human rights of detainees was thus an important one, as was the item on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. The Working Group set up at each session to carry out the annual review of information on detainees and other tasks made an important contribution to the Sub-Commission's work in that area, and the Sub-Commission might also wish to consider the need for the judicial system to prevent violations of human rights, in particular through the punishment of offenders.

36. Reference had already been made to the importance of social justice to democracy and consequently to the enjoyment of all those human rights which could be realized only in a democratic society. In that regard the Sub-Commission would have before it Mr. Türk's report on problems, policies and progressive measures relating to the more effective realization of economic, social and cultural rights. Mr. Türk would be reporting on his contacts with international financial institutions on the matter. In his capacity as Under-Secretary-General for Human Rights, he had had extensive meetings with UNDP, the World Bank, OECD and other organizations on reinforcing activities for the promotion of human rights and on establishing an operational link between development activity and human rights. He had also been active in seeking the inclusion of human rights elements in the various international economic and development documents adopted within the United Nations system.

Most recently, the matter had been raised in Addis Ababa, at the seventeenth meeting of Ministers of Economic Development and Planning of the Organization of African Unity and the twenty-seventh session of the Economic Commission for Africa.

37. Mankind was truly rich in its diversity, and that diversity was one of its fundamental values. All over the world people had learnt to live together in their diversity and to enrich themselves through their differences, but unfortunately in some areas differences and diversities were giving rise to tensions and widespread violence and loss of life. Thus the issues of the respect due to the rights of minorities, of appropriate measures to protect and promote their culture, language and other traditions and of how best to deal positively with situations in which minorities were involved had been of growing concern to the international community. The report on national experiences in the protection of minorities would be of key importance to future work on those issues, which were of increasing significance to the United Nations.

38. Within the framework of the Conference on Security and Cooperation in Europe (CSCE), the question of the protection of minority rights had been a source of growing concern. In July 1991 a CSCE Meeting of Experts on National Minorities had taken place in Geneva. As head of the Centre for Human Rights, at the opening meeting he had delivered a statement on United Nations standards and procedures relating to minorities, and the Centre for Human Rights had been represented throughout the session. He had described the main substantive contents of international human rights law relating to minorities, as adopted by the United Nations, which entailed equality and dignity for all human beings, the protection of physical existence, the protection of national, ethnic, linguistic, cultural and religious identities and characteristics, and the preservation of those identities through special rights and special measures in the fields of education, language, culture and religion. He had further stated that the realization of those standards would benefit States in terms of political and social stability, as well as the consequent enhancement of economic prosperity. Their realization would likewise benefit persons belonging to minorities by preserving and continuing the development of their identities and characteristics, as well as the international community and its respective organizations by maintaining peace and stability. He had been pleased that the Centre for Human Rights had been able to take part in the CSCE meeting because he strongly felt that the United Nations experience should be shared with the CSCE and that first-hand information on European thinking should be available to the United Nations. The report of the meeting would, when finalized, be made available to the Sub-Commission.

39. Over two years previously it had appeared that in view of the momentous changes which were taking place in international affairs, of the growing importance of human rights and of the establishment of democratic Governments in many parts of the world, the time was ripe for the international community to take stock of achievements in the field of human rights and to consider the road ahead. Thus in 1989 he had suggested to the General Assembly that a World Conference on Human Rights should be held for that purpose, and in 1990 the General Assembly had decided to convene a Conference for 1993. The objectives of the Conference were, broadly speaking, to review and assess progress in human rights since the adoption of the Universal Declaration, to

identify obstacles to progress and how they might be overcome, to examine ways of improving the implementation of human rights and to make concrete recommendations for improving the effectiveness of United Nations activities and mechanisms and for obtaining the resources needed to that end. An important element was the examination of the relationship between development and the enjoyment of all human rights and the creation of the conditions necessary for their enjoyment. The General Assembly had given an important role to expert bodies such as the Sub-Commission in the preparations for the Conference. At its most recent session the Commission on Human Rights had also made provision for the participation of the Sub-Commission, through its Chairman or another designated member, in the work of the Preparatory Committee, whose first session would take place in Geneva early next month. The Sub-Commission might wish to consider its own contribution.

40. The past year had been particularly important for the rights of children. In September 1990 the Convention on the Rights of the Child had entered into force and the leaders of the world had gathered in New York for the World Summit for Children. In the Declaration and Programme of Action which the World Summit had adopted, it had asked each agency and body of the United Nations system to see what it could do to further the rights of the child. He would like to suggest that, as the session progressed, the Sub-Commission should examine each item and activity to determine its relevance to the rights of the child and how the Sub-Commission itself could make an improved contribution to the realization of those rights. The development of an overall approach to the issue would be an important condition for the realization of the objectives of the World Summit and for respect for the rights of the child. He was pleased to inform the Sub-Commission that there were now 93 States Parties to the Convention on the Rights of the Child and that the first session of the Committee on the Rights of the Child would be held at the end of next month in Geneva.

41. The Sub-Commission was called upon to carry out its work in a world where the human rights situation was one of stark contrast between undeniable progress on the one hand and the painful reality of widespread violations on the other. Over the past few years significant changes had taken place in many parts of the world. Democratic movements had enabled people to regain control of their own destinies. Namibia was now an independent State Member of the United Nations. There was also reason to believe that in spite of difficulties and set-backs, a new South Africa would become a reality. The process which had begun there would, however, be difficult and complex. A number of obstacles remained to be overcome, of which intercommunal violence and the release of all political prisoners were but two examples.

42. It was nevertheless a matter of the deepest concern that in many places human beings were systematically being denied their basic rights. Assaults on life and physical security through torture, summary or arbitrary executions or disappearances were all too widespread. The ugly phenomenom of racism continued to show itself. The freedoms of thought and expression were being violated, and peaceful dissent and demands for change were being met by violence. The basic necessities of life as described in the Universal Declaration were out of the reach of many millions of human beings. There were reports of denials of religious and cultural freedoms, foreign occupation and the use of mercenaries to attack the basic right of peoples to self-

determination. Alarming reports of discrimination and expressions of racial hatred and intolerance were received all too frequently, particularly with regard to such vulnerable groups as indigenous peoples, gypsies and migrant workers. It was in that context that the Sub-Commission faced the challenge of using its expertise, knowledge and courage to help bring about real change in the way people lived throughout the world - an essential challenge which it was uniquely suited to meet. Members could rest assured that in that noble pursuit the Sub-Commission had the full support of the Centre for Human Rights.

ELECTION OF OFFICERS (item 1 of the provisional agenda)

43. The TEMPORARY CHAIRMAN invited the Sub-Commission to elect its Chairman for the forty-third session.

44. Mrs. DAES nominated Mr. Joinet for the office of Chairman.

45. Mr. KHALIFA, Mr. HATANO, Mr. TREAT, Mr. DIACONU, and Mr. ALFONSO MARTINEZ seconded the nomination.

46. Mr. Joinet was elected Chairman by acclamation.

47. Mr. Joinet took the Chair.

48. The CHAIRMAN invited nominations for the offices of Vice-Chairman.

49. Mr. SABOIA nominated Mr. Heller for the office of Vice-Chairman.

50. Mr. HATANO nominated Mrs. Bautista for the office of Vice-Chairman.

51. Mr. DIACONU nominated Mr. Türk for the office of Vice-Chairman.

52. Mrs. Bautista, Mr. Heller and Mr. Türk were elected Vice-Chairmen by acclamation.

53. The CHAIRMAN invited nominations for the office of Rapporteur.

54. Mrs. WARZAZI nominated Mr. Guisse for the office of Rapporteur.

55. Mr. Guisse was elected Rapporteur by acclamation.

56. The CHAIRMAN said that his opening statement would focus on the question of the Sub-Commission's future in the light of its past.

57. The first session of the Sub-Commission was held on 27 January 1947; it had consisted of 12 members. In 1959 there had been 14 members; in 1965, 18; and since 1969 there had been 26. After three years of existence, in 1950, the first alarm had sounded. Made uneasy by the independent spirit of the members of the Sub-Commission, some Western member States had joined forces to secure its abolition. The members had reacted immediately, forcefully and successfully, since the General Assembly had finally decided to maintain the Sub-Commission.

58. In 1986 the second alert had sounded. The Sub-Commission learned in a terse communication from the Secretariat that its thirty-second session was to be postponed, without any indication as to whether the decision would be temporary or definitive. The reaction was equal to the situation: an international subscription was started by a group of non-governmental organizations to enable the Sub-Commission, at least symbolically, to hold not a "wildcat" but an alternative session, since, having been denied hospitality by the Centre, it had been received by ILO.

59. The affair made a considerable stir in United Nations circles and a delegation was finally received in New York by the Secretary-General who, true to his word, took effective steps to reinstate the sessions of the Sub-Commission on a permanent basis. Doubtless spurred on by those alarms, the Sub-Commission had demonstrated dynamism and creativity by achieving significant progress, whether by strengthening its safeguards of independence or by making improvements in carrying out its terms of reference.

60. Various stages marked the Sub-Commission's journey towards ever-greater independence. First, in addition to the nomination of members by election, the costs incurred by the Sub-Commission were now met by the United Nations and not by the members' respective Governments. Then there had been the decision to elect alternates, previously appointed by Governments, to ensure that they would enjoy the same safeguards of independence as the members, of whom they were henceforth themselves independent and thus not bound by the positions adopted by members. The date of 15 December 1989 had marked a decisive stage: following the persecution suffered by the Sub-Commission's Romanian colleague, Mr. Mazilu, the International Court of Justice had handed down an important ruling to the effect that the privileges and immunities enjoyed by United Nations staff were applicable to members of the Sub-Commission. Finally, the Economic and Social Council had recently confirmed the possibility of voting by secret ballot on situations of human rights violations.

61. In short, there had been significant progress in matters relating to independence, at least at the statutory level, although on the specific issue of nomination of alternates, the Commission had several times expressed the wish that any ambiguity should be removed by avoiding as far as possible the selection of alternates from among the members of permanent missions. Despite the decisive progress achieved on the Sub-Commission's status, any solution involved a strong intellectual independence which in turn hinged on the conscience of the individual member.

62. The interpretation of the Sub-Commission's terms of reference was another source of misunderstanding. Contrary to what had been said or written, the Sub-Commission's basic mandate was extremely flexible. Although the first part of its terms of reference was clear, namely, that it would carry out studies in the light of the Universal Declaration of Human Rights and make recommendations concerning both the prevention of discrimination and the protection of minorities, the second part stated that the Sub-Commission would perform any other functions which might be entrusted to it by the Economic and Social Council or the Commission on Human Rights. Under that second provision, over the years, the Economic and Social Council and the Commission had called upon the creativity of the Sub-Commission in order to strengthen the machinery

for safeguarding standards and above all to increase the effectiveness of their implementation mechanisms. Thus, the Working Group on Enforced or Involuntary Disappearances and, quite recently, that on arbitrary detention had come out of the Sub-Commission's work.

63. Other tasks which, although not directly related to the strict interpretation of the Sub-Commission's terms of reference, had nevertheless been entrusted to the Sub-Commission by its parent bodies, included: the consideration of communications under the 1503 procedure; the follow-up of the question of slavery, or again that of prostitution; the submission by the Sub-Commission to the Commission of an annual report on human rights violations to facilitate the Commission's consideration of the question and whose feasibility was at present being studied by one of the Sub-Commission's working groups. Finally there were the initiatives that made it possible to bring to the attention of the Commission situations that might reveal a systematic pattern of human rights violations.

64. The real question at issue between the Commission and the Sub-Commission was not so much the scope of the terms of reference as the ways and means of implementing it. It concerned working methods rather than content. The future development of the Sub-Commission would be dependent on improved working methods.

65. The issue had been considered at regular intervals in the past; resolutions had been adopted but had not been followed up with action notwithstanding the exhortations of the Commission. The diagnosis was clear and the difficulties had been identified. All that remained to be done was to prepare and implement a strategy, hopefully at the current session.

66. At the end of the previous session, Mr. Despouy, Mr. Maxim, Mr. Heller, Mr. Khalifa, Mr. Suescon and himself had prepared a working paper containing suggestions for substantial innovations and, in particular, had proposed that the vast majority of statements by representatives of Governments and non-governmental organizations should be consolidated at the beginning of the session. Subsequently informal consultations with Mr. Türk, then Chairman, and Mr. Heller had demonstrated that real in-depth reform would probably be less acceptable if the issue was forced but that the moment was ripe for stage-by-stage structural reform. He therefore wished to propose that a first step should be taken during the current session. Initiatives taken by the Sub-Commission and many suggestions by non-governmental organizations, in particular, the proposal to consolidate the current 20 agenda items under five major headings, bore witness to the new trend. In the same vein, Mr. Hatano had made a proposal, for the longer term, for an ambitious reform of the current rules of procedure.

67. One of the most delicate reforms concerned the issue of the time given to speakers. In cooperation with the secretariat, he had prepared some comparative statistics, which would be distributed as a working paper, on the speaking time used by individual speakers at the previous session. The memorandum showed for example that none of the observers of Governments and non-governmental organizations had used the full speaking time available to him on any of the agenda items considered. The real problem was to be found

in the imbalance between, on the one hand, the time allotted to the experts (11 days), whose number (26) had not changed since 1969, and, on the other hand, the time allocated to observers. One day was allotted to government observers although the number of such observers had increased from 1 in 1952 to 82 in 1990. Three days were allocated to non-governmental organizations although the number of their observers had increased from 77 in 1989 to 92 in 1990 and would probably exceed 100 in 1991. The remaining five days of the session were divided between the Chairman, the Secretariat, the three working groups and work suspensions and delays; the last mentioned item accounted for one and a half days per session.

68. The practical result of such an unbalanced division of speaking time had been that, in the third week of each session, it had been necessary to limit the length of speakers' statements, to the disadvantage of speakers compelled to speak at the end of the session.

69. He therefore suggested that, in order to set the ball rolling, the officers should meet in a working lunch at the end of the current meeting in order to discuss the agenda so that the Sub-Commission would be in a position to take decisions at the beginning of the morning meeting on the following day.

70. Current practice was that a detailed statement on each item was made by the Under-Secretary-General or by one of his colleagues. As the Under-Secretary-General had prepared an excellent and exhaustive annotated agenda, it would seem to be sufficient that such interventions should be restricted to a brief procedural statement. The current practice would then be replaced, as from the current session, by a statement by the Under-Secretary-General in which he would make a broad analysis of the agenda at the beginning of the session and, should he so wish, emphasize certain substantive issues.

71. Other possible initiatives had emerged during the informal consultations. Some could be implemented easily and could persuade the Commission to recognize the Sub-Commission's determination to take practical steps to improve its working methods. Speakers might be requested to make their statements in such a way as to economize delivery time. Governments might be asked to group statements equivalent to the exercise of the right of reply at the end of the list of NGOs. NGOs might be encouraged to submit group statements; they might then benefit from additional speaking time, for example 15 minutes instead of 10 minutes and 20 minutes instead of 16 in the case of a complex agenda item. The Secretariat might be asked whether it would be possible to inform experts on the amount of speaking time they had used since the beginning of the session with a view to encouraging self-discipline and helping the Chairman balance the use of time more evenly.

72. Concerning the preparation and presentation of reports, all proposed new reports might be preceded by a feasibility study in the form of a working paper. At the end of each session, the Sub-Commission would appoint "consultant rapporteurs" for the following session to study reports in depth with a view to initiating the discussion and establishing conditions for a proper critical debate. In order to facilitate the pre-session work of the "consultant rapporteurs" they might be provided with a copy of the relevant report as soon as it was received by the Secretariat.

73. On the issue of resolutions, any draft resolution not supported by at least three sponsors should be withdrawn by the Chairman, in consultation with the officers.

74. On the issue of the timely opening of meetings, in the event that the Chairman was not available at the stipulated hour, the most senior of the members then present should, at the invitation of the Secretariat, take the chair, even if there was not a quorum, always provided that the agenda did not contemplate that decisions would be taken.

75. The confrontational character of the discussion between experts should be encouraged. At the previous session Mrs. Ksentini had suggested that the all too frequent monologues in the discussions should be ended. In that connection he proposed that, as an experiment, a one-minute right of "immediate intervention" should be established which would enable non-inscribed experts to intervene directly in order to refute an argument or reply to a question and thus make the discussion more lively.

76. As regards the management of the agenda, progress could be achieved through the following initiatives. On item 4, the Secretariat should at each session report on those sub-items which had already been discussed at previous sessions and could therefore no longer be regarded as new. Those sub-items could then be incorporated in the corresponding agenda items. Thus the sub-item on compensation for victims of gross violations of human rights should be considered under item 10 on the administration of justice, or item 6 on violations. Again, the sub-item on human rights in times of armed conflict could be considered under item 14 on international peace and security as an essential condition for the enjoyment of human rights.

77. In connection with item 5 on the elimination of racial discrimination, the question of apartheid was currently considered under items 5 (a), 5 (b), 6 and even 10. Interventions on apartheid would have greater impact if they were consolidated under sub-item 5 (b) which was currently limited to the excellent annual reports of Mr. Khalifa on the adverse consequences of economic assistance to apartheid.

78. In connection with items 7 and 8, experience during the three previous sessions had shown that item 8 was complementary to item 7 and that they could therefore be merged.

79. Some of those initiatives might be adopted as a first step towards an in-depth examination of the feasibility of structural reform such as had been proposed by certain non-governmental organizations for the consolidation of the entire agenda under the following five headings: civil and political rights; economic, social and cultural rights; elimination of discrimination and protection of minorities; human rights, ethics and progress of science and technology; and promotion of human rights and consideration of relevant mechanisms.

80. The proposal might be studied during the forty-fourth session together with the project regarding the rules of procedure on which Mr. Hatano was conducting private consultations.

81. He suggested that the Sub-Commission should appoint one of its members during the current session to collect, analyse and synthesize all the suggestions which had been made and to submit concrete proposals for action to the forty-fourth session.

82. Mr. ALFONSO MARTINEZ said that the Chairman's important statement needed to be further analysed either by the Sub-Commission itself or by a working group. It would be inappropriate to start an immediate discussion.

83. Mr. SADI supported Mr. Alfonso Martinez and proposed that the statement should be distributed as a document. It should perhaps be considered as an additional agenda item.

84. The CHAIRMAN reminded the Sub-Commission that only 19 days were available during the current session for the Sub-Commission's own work as one day would require to be devoted to the joint meeting with the Committee on the Elimination of Racial Discrimination.

85. Mr. ALFONSO MARTINEZ considered that the joint meeting with CERD must not be given greater importance than the Chairman's proposals.

86. Mrs. PALLEY suggested that there should be a preliminary discussion, preferably in an informal meeting.

87. Mrs. WARZAZI supported Mrs. Palley's suggestion for a private discussion. There was one shortcoming in the Chairman's statement in that it made no mention of the importance of the timely distribution of documents. That was vital to the Sub-Commission's discussions.

TRIBUTE TO THE VICTIMS OF APARTHEID

88. The CHAIRMAN recalled that the Sub-Commission, in its decision 1985/109, had decided to observe, at the beginning of each session, a minute of silence in honour of the victims of apartheid.

89. The members of the Sub-Commission observed a minute of silence in honour of the victims of apartheid.

ADOPTION OF THE AGENDA (item 2 of the provisional agenda)
(E/CN.4/Sub.2/1991/1, Add.1 and Corr.1 and Add.2)

90. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission wished to adopt its provisional agenda.

It was so decided.

The meeting rose at 1.15 p.m.